IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR.4JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 23748 of 2004

Between:

Mr.Mahaboob Ali S/o.M.Mahammed Ali

Door No:19-2-18?D 17 camp @ Misri gunj,Hyderabad -64
R/o of 72-14-226, Grambay Road,
Bavanipuram, Vijayawada-12.

..... PETITIONER

AND

1 The Chief Controlelr of Stores APSRTC,
Musheerabad Circle, Hyderabad.
2 The Controller of Stores APSRTC
Uppal, Hyderabad.
3 The Assit Commissioner of (CT) (LTU) (INT), O/o The Deputy Commissioner (CT)
Secunderabad Division, Abids,Behind Chermas,
Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or Direction more particularly in the nature of Writ of Mandamus declaring the action of the Respondents namely the Controllers of Stores,APSRTC,Uppal seeking to levy and collection of Tax @12% on the sale of secondhand vehicles as illegal, arbitrary and without authority of law and contrary to the judgment of this hon'ble court in 30 APSTJ Pg.217 violating Article 227 of the Constitution of india and grant such other releif or reliefs.

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondent Nos.1 and 2 : Mr. R.M. Reddy.

Counsel for the Respondent No.3: Spl. GP FOR COMMERCIAL TAX.

The Court at the stage of admission made the following :

ORDER: *(Per the Honourable Sri Justice M.H.S.Ansari)*

Heard the learned counsel for the petitioner, the learned counsel for respondents-1 and 2 as also the learned Standing Counsel for A.P.S.R.T.C. and the learned Special G.P. for Commercial Taxes.

Keeping in view of the nature of the relief prayed for in the instant writ petition and also keeping in view that similar matter has been considered by this Court in VIJAYAKUMAR & CO. VS. CONTROLLER OF STORES, APSRTC (), the instant writ petition is disposed of with the similar directions as under:

1.Delivery of buses will be given to the petitioner subject to the fulfillment of other conditions on payment of 1% of the turnover tax and furnishing Bank guarantee for the balance tax (12 percent minus 1 percent) to the satisfaction of 3rd respondent within a period of four (4) Weeks.

2.APSRTC should file a return under the APGST Act showing the turnover in question within one month and request the assessing authority to determine the quantum of tax payable. Along with the covering letter, the APSRTC should furnish the full information in its possession as to the source of purchase of buses or chassis and bus bodies, as the case may be, and whether they were subjected to tax within the State. If the vehicle had been sold in the form of ready made bus within the State, the relevant information thereto in the possession of the Corporation should be furnished.

3.The petitioner may submit to the first respondent in two Weeks a representation highlighting the contentions in support of its claim that no tax other than the turnover tax is liable to be paid. The said representation should also be forwarded to the assessing authority along with the return and the

assessing authority is bound to consider the points raised in such representation, apart from the points made out by the Corporation.

4.The assessing authority or his nominee may make note of the physical features and condition of the bus, if necessary, taking the assistance of the technical personnel of APSRTC or any other technical personnel.

5.The assessing authority should give its decision within six weeks from the date of receipt of the return together with the above information/representation. The assessing Officer should inter alia keep in view the circular of the Commissioner of Commercial Taxes dated 2.2.2000. The assessing authority among other things may address himself to the question as to the classification of goods sold.

6.In the light of the order of the assessing Officer which shall be communicated to the petitioner also, either the Corporation or the petitioner or both can file appeals if necessary. Till the issue is determined by the appellate authorities, the Bank guarantee will be kept alive.

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JUSTICE M.H.S.ANSARI

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JUSTICE S.ANANDA REDDY

21ST DECEMBER, 2004

GURC.

Copies to

1.The Chief Controller of Stores APSRTC, Musheerabad Circle, Hyderabad.
2.The Controller of Stores APSRTC ., Uppal, Hyderabad.
3.The Assit Commissioner of (CT) (LTU) (INT), O/o the Dy. Commissioner(CT), Secunderabad Division, Abids,Behind Chermas, Secunderabad.

4. Two C.Cs. to the learned Spl. G.P. for Commercial taxes (OUT)

5.Two C.D. copies.

THE HON'BLE SRI JUSTICE M.H.S. ANSARI

and

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 23748 of 2004

(Judgement delivered by the Honourable

Sri Justice M.H.S.Ansari)

21st DECEMBER, 2004